



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2004

Ms. Lisa B. Silvia  
Paralegal  
Fort Worth Independent School District  
100 North University Drive, Suite NW 130  
Fort Worth, Texas 76107

OR2004-7331

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 208145.

The Fort Worth Independent School District (the "school district") received a request for a copy of the December, 2002, memorandum which concerns a certain former school district employee's confession to engaging in certain behavior while he was a high school coach. You claim that the requested information is excepted from disclosure under sections 552.101, 552.135 and 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You submitted two enclosures as responsive to this request. Enclosure 2 is an Office of Special Investigation memorandum dated December 17, 2002, on the subject of the polygraph statement by the former school district employee named in the request. Enclosure 3 is a polygraph test result report by a polygraphist with the Southwest Polygraph Service and attachments to that report. We do not consider the polygraph report and attachments to be responsive to this request and so, do not address the exceptions you raise to the required public disclosure of this information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 1703.306 provides as follows:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Polygraph Examiners B]oard or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

*Id.* § 1703.306. We find that a small portion of Enclosure 2, which we have marked, is confidential under section 1703.306. As there is no indication that the requestor has a right of access to this information, it must be withheld under section 552.101.

Section 552.101 also encompasses the doctrine of common-law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts about a person's private affairs the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

After review of the information in the memo that is not confidential under section 1703.306, we find that portions of the information are not about a person's private affairs, but rather, concern workplace behavior. For this reason, the information does not meet the *Industrial*

*Foundation* test for protection as private information. *See* Open Records Decision Nos. 444 at 5-6 (1986), 405 at 2-3 (1983). For other portions of the information, it is not clear whether the information concerns workplace behavior. However, even if the information does not concern workplace behavior, we find that the public has a legitimate interest in the information. Thus, the information is not excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.

Section 552.135 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. A school district that seeks to withhold information under section 552.135 must identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. You state that the information concerns a violation of

chapter 247 of the Texas Administrative Code, specifically Principles I, III and V. You also state that the school district provided Enclosure 2 to the State Board for Educator Certification and that the school district has not released the memo to anyone other than law enforcement or regulatory agencies. However, you do not specify a regulation, law, or laws that were reported to be allegedly violated. Furthermore, section 552.135 only protects information that identifies an "informer" as defined by subsection (a). *See id.* § 552.135(b). You have not identified the individual whose identity you seek to protect. As to the identity of the confessor, the exception does not apply to information that identifies an individual who participated in the possible violation. *See id.* § 552.135 (c)(3). Thus, we find that section 552.135 does not apply to the information.

In summary, with the exception of the information we have marked as confidential under section 1703.306 of the Occupations Code and excepted from disclosure under section 552.101 of the Government Code, the school district must release Enclosure 2 to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

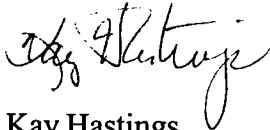
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 208145

Enc: Submitted documents

c: Ms. Barbara Griffin  
WFAA-TV  
1200 Summit Avenue, Suite 102  
Fort Worth, Texas 76102  
(w/o enclosures)